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CASE NO. 82-1629

ALEXANDER L. STEVENS,
CLERK

in the
Supreme Court
of the
United States

OCTOBER TERM, 1962

**BRITO ENTERPRISES, INC., TA
BRITO'S BOATYARD,**

Petitioner,

vs.

H.J. WESTBERRY,

Respondent.

**BRIEF IN OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT
OF APPEALS, ELEVENTH CIRCUIT**

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INTRODUCTION/LISTING OF PARTIES

The Respondent, H.J. Westberry (appellee below) was the plaintiff in the trial court in an action seeking money damages against Petitioner, Brito Enterprises, Inc. (appellant below), the defendant in the trial court.

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SUMMARY OF ARGUMENT

The decisions below were factually and legally correct. The Petitioner's reargument of factual matters is not only inaccurate and improper, but also falls far short of the burden of establishing an important reason why this Court should exercise certiorari jurisdiction.

ARGUMENT

The appellate court determined that the judgment of the trial court was based on findings of fact that were *not* clearly erroneous and that the trial court did *not* err in applying the correct legal principles. 11th Cir. R. 25. Accordingly the final judgment in favor of the Respondent was affirmed *per curiam*, and similarly, the petition for rehearing denied.

The facts of this case as found by the trial court (App. D-3-11 of Petitioners Brief), are clear and concise, and amply support the final judgment and therefore do not require discussion. The trial judge's own comments suffice:

"The Court makes the further finding that virtually every finding of fact that I have made has been corroborated by the testimony, not only of Mr. Westberry, the owner of the boat, but Mrs. Westberry . . ."

(Trial Transcript at p. 166).

It is therefore surprising that the Petitioner would be so bold as to argue that the result reached by the trial court "is clearly erroneous and without sufficient foundation in the record to stand any scrutiny." (Petitioners Brief at P.10). Perhaps Petitioner was swayed by its own argument which consists of nothing more than a complete misstatement and contortion of the facts of this case.

It is unfortunate that the Petitioner felt compelled to resort to such distortion to illustrate the nature of this case and the proceedings below.

The trial court's jurisdiction over the subject matter of this claim was pursuant to Titles 28 U.S.C 1332 and 28 U.S.C. 1333, diversity of citizenship and maritime jurisdiction, respectively. The nature of the claim was for damages resulting from the Petitioner's negligent breach of a bailment agreement for the storage of Respondent's vessel. A maritime nexus was clearly present and therefore principles of the admiralty, as concern bailments, were correctly applied. *Chanler v. Wayfarer Marine Corp.*, 302 F.Supp. 282 (D.Me.1969); *English Whipple Sailyard, Ltd. v. Yawl Ardent*, 459 F.Supp. 866 (W.D. Pa.1978); See also, *Dow Chemical Co. v. Barge UM-23B*, 424 F.2d 307 (5th Cir. 1970).

Concurrently, the trial court's application of Florida law on the issue of damages was equally correct. *Erie Railroad Co. v. Tompkins*, 304 U.S. 64, 58 S.Ct. 817, 82 L.Ed.2d 1188 (1938). The petitioner somehow overlooked this aspect of the case in arguing that the lower courts failed "to apply valid state laws." (Petitioner's Brief at p.12).

In sum, the Petitioner's argument is bereft of any accuracy, validity or merit. The fact that "Petitioner is confronted with a very substantial adverse judgment" (Petitioners Brief at p.11) is unfortunate, but, irrelevant. Sympathetic pleas aside, the Petitioner simply fails to state any special or important reason why this Court should exercise jurisdiction over this claim.

Respondent would therefore submit that the petition should be denied.

CONCLUSION

It is respectfully submitted that Petitioner has wholly failed to sustain its burden under Rule 19. The Court of Appeals correctly affirmed the trial court's final judgment in favor of Respondent.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed to Robert Lamar Bell, 1529 Alfred I. DuPont Building, 169 East Flagler Street, Miami, Florida 33131, this 4 day of May, 1983.


REGINALD M. HAYDEN, JR.